

1764  
L E T T E R

F R O M

C A N D O R,

T O T H E

PUBLIC ADVERTISER.

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Honi soit qui mal y pense.

St. GEORGE of England.

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The SECOND EDITION,

Printed from a more Legible Copy.

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L O N D O N :

Printed for J. ALMON, opposite *Burlington-House* in  
*Piccadilly.* 1764.


[Price One Shilling.]





**C**ANDOR presents his Compliments to Mr. Almon, and desires he will convey for him the following Letter, a small part of which has been printed already. As Mr. Almon has hitherto published nothing but what is in opposition to the present Ministry, CANDOR thinks it is high time for him to shew some impartiality, by letting the world see what may be said in favour of some of the great men in office ; and for this reason desires he will be the editor of the subsequent pages. Seeing all people agree that the Liberty of the Press should never be violated, and that it does no service, in the long run, to any man that attempts it, every Printer should be totally free, and therefore impartial.

GRAY'S-INN,  
Aug. 31, 1764.



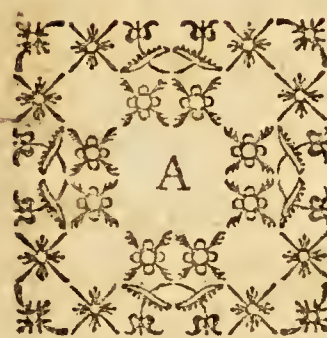




A

# LETTER, &c.

S I R,

 S your correspondent, CRITO, has very properly, in the Publick Advertiser of the 29th of last month, taken notice of the late verdicts obtained by the Government against the Printers of the North Briton, No. 45. for a Libel; Give me leave to add, that he should, at the same time, have given due praise to the Great Justiciary, who tried the Defendants, for the legal part he acted upon that occasion. His Lordship, in a very masterly manner, interrupted the Counsel, and informed them, and afterwards, in an elaborate discourse, clearly instructed the Jury, that the words in the Information, charging the Paper to have been published with the most wicked intent, in order to excite his Majesty's dutiful subjects to sedition, and charging it to be a false, scandalous and seditious libel, were words of course, like corrupt in an indictment for Perjury, or like those in an indictment for Murder, charging the murder to have been committed at

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*the Instigation of the Devil*, and that the Jury ought not to regard them at all, but to consider merely whether the Defendants had published the Paper. His Lordship's summing up was particularly long, pathetic, and explanatory, and abounded with well adapted observations, and ingenious distinctions. Among other striking instances, wherein he pointed out the evil effect of this free Writer's papers, he mentioned, very justly, the article of Cyder, which has, as we all know, raised so much discontent and ferment of late throughout the greatest part of England. One would have thought a deliberate and able speech of this kind, upon a matter of very general consequence, deliver'd from the Bench by the supreme Magistrate, under all the circumstances of solemnity, awe and respect attending the highest court of criminal jurisdiction, especially when accompanied with an easy, familiar, friendly and winning address, would have intirely convinced any twelve unprejudiced and unlearned people. It must, in my conscience, have strongly affected them. How could they, uninformed as they were beforehand, in the least withstand the first Law-judge of the realm, upon a legal and constitutional point! However, in fact, it must be admitted that the Jury doubted about their verdict for an hour and half, notwithstanding this clear instruction from the Chief Justice of England; imagining, I suppose, it was new doctrine, and that they were really at liberty to consider the whole nature and tendency of the publication, and whether the paper was a false and malicious libel or not, agreeable to what it was charged to be in the Information, and not merely



y who published it ; concluding, probably, that  
 if such representation were immaterial, this Great  
 Judge, who has so much to his reputation al-  
 ready very greatly shortened and altered the usual  
 proceedings in all causes and trials, would have  
 long ago forbid the crown-pleaders to insert such  
 unnecessary words, and have reduced the charge to  
 a mere averment of the fact, that such persons pub-  
 lished such a paper, without giving any name or  
 character to it at all. And, in truth, it were much  
 to be wished that these strange charges, so useless  
 and expensive, should be totally omitted for the fu-  
 ture. For, Juries, after being sworn, are solemn-  
 ly bid to listen to the charge whereon they are to  
 pass between the King and the Defendant, and  
 then have the whole of these long informations  
 gravely read to them, without any distinction of  
 parts, whereby they must ever be led into a notion  
 that they are bound, on the oaths they have taken,  
 to consider the whole of what is so read to them,  
 as their charge, and to determine thereon ; and it  
 is well known that Juries, at best, are but too apt  
 to form strange judgments, and to do the wrong  
 thing. Indeed, I remember, not many years  
 ago, to have heard a very great Law-oracle, up-  
 on a motion for a new trial, take the opportunity  
 of pronouncing it as his opinion, to the admiration  
 of every body, that “ the Trial by Jury was a very  
 “ bad sort of trial, and would be the worst of  
 “ all, were it not for the controlling power of  
 “ Judges by the granting of new trials,” &c.  
 Now the law touching Libels, is a matter far  
 above the reach of any Jury ; and it is not Lord  
 \*\*\*\*\* that has started the notion, or broach-  
 ed a new opinion. In the end of Charles the Se-  
 cond's



cond's reign, that great and famous Judge, Lord Chief Justice Jeffreys, said the same thing. Look into the State-trial of Sir Samuel Bernardiston, for a Libel in those days, in publishing some letters on the behalf of Algernon Sidney and Lord Russell, which highly reflected on the King and his Government, and you will find, that when the Counsel for the Defendant pretended that the part of the Information, which charged these letters to be a false, scandalous, and seditious libel, was a matter for the Jury's consideration, that able Chief Justice interrupted him, and said, " Let us have none of that Doctrine. " The Law supplies the proof ; the thing itself " speaks malice and sedition. As it is in Murder, we say always in the Indictment : *He* " *did it by the instigation of the Devil.* Can the " Jury find he did it not by such instigation ? " So in Informations, for offences of this nature, " we say, He did it falsely, maliciously, and seditiously ; which are the formal words : but " the nature of the thing necessarily imports " Malice, Reproach, and Scandal to the Government : there needs no proof but of the " fact done, the Law supplies the rest." And the same Lord afterwards, in summing up to the Jury, enlarged upon, and enforced the same Arguments, saying, among other things, " The " proof of the thing itself proves the evil mind " it was done with. If then, Gentlemen, you " believe the Defendant did write and publish " these letters, That is proof enough of the " words Maliciously, Seditiously, and Factiously, " laid in the Information. It is high time for " all mankind to bestir themselves to rid the " nation



“ nation of such Caterpillars as these are. As  
 “ for any thing that he has said of me, Sir Sa-  
 “ muel shall write and speak of me as long as  
 “ he pleases. But though he says, *I am down in*  
 “ *the Mouth*, yet I hope I shall never lose my  
 “ heart nor spirit to serve the Government, nor  
 “ forbear to use my utmost diligence to see that  
 “ such offenders as these, that entertain principles  
 “ so destructive to the Government, be brought  
 “ to condign punishment. And, be they who  
 “ they will, were they *my own brothers*, I  
 “ should be of the same mind. Gentlemen,  
 “ the question before ye is, Whether the De-  
 “ fendant be guilty of writing these malicious,  
 “ seditious letters, that tread very near upon the  
 “ borders of High Treason itself. I am sure I  
 “ may venture to call it Confession German to High  
 “ Treason. I would not have given you so  
 “ much trouble at this time in an affair of this  
 “ nature, but only because I see it is a matter of  
 “ great expectation and consequence. They are  
 “ Traitors in their minds whatsoever they are in  
 “ their outward pretences.” In short, the lan-  
 guage of Law, touching Libels, was, in the Court  
 of King’s Bench, the same before the Revolu-  
 tion as it is now. And Lord Jeffreys and Lord  
 \*\*\*\*\* not only concur in sentiment, but in  
 expression. But, although both of these great  
 men are remarkable for the abilities they have  
 shewn when presiding in the King’s Bench, yet  
 there is a wide difference between their man-  
 ners and characters. The former was always  
 reckoned a Lawyer, bold, and outrageous ;  
 whereas I never heard any one of these terms  
 applied to the latter ; and, in particular, his  
 agreeable



agreeable and conciliating demeanor, to a Jury, is universally admired. I presume their natural tempers must be very different, as well as their original connections and educations ; in all probability, the Great Lord now living, has many accomplishments of Art and Eloquence, which the other wanted ; and he has withall had the advantage of having ever practised in Courts of Equity ; which circumstance alone surprisngly softens the Rigor of the old Common Law, and accommodates it more to the humour and turn of the age. In short, he perceives how little regard the old adjudications deserve from a change in the times. He is besides so peculiarly acute, refined, and logical, in his distinctions between cases of Law, which, to ordinary men, seem to be the same, and to be cases in point ; and, in trials by Jury, he is so able in separating or assembling (as the cause may require) the different parts of the testimony, and in passing over or slurring one fact as immaterial, and enforcing another as material ; that he never fails of carrying, to every auditor at the time, the appearance of right or wrong along with him. What a happiness therefore it is to have one's suit determined, or tried, by a person of so nice a discernment, and of so much judgment and capacity ! He is so happy, likewise, in a memory, that he forgets nothing, and therefore wants no repetition of matters that have been once laid before him : inasmuch that he can deliver the evidence, or, at least, what he may regard as the necessary part of it, by his memory alone, and as it were in a speech, without having much recourse to his notes, or to the usual dull way of rehearsing  
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it word for word. The strength of his faculties of remembrance cannot be better illustrated than by a familiar and domestic, but very remarkable instance of the faithfulness of his recollection, and that is, that he can even remember all the healths he himself has drank since his being twelve, or, at most, fourteen years of age. His predecessors, it is true, had every affidavit read over and over again, and used merely to stick to the letter of old precedents in points of Law ; and, in trials by jury, were religiously accustomed to write down, and afterwards most regularly to read out, every tittle of the evidence as it had been delivered, with little or no observation, leaving the Jury to judge of the facts in their own way, and according to their own understandings. But, as the end of all Law is substantial Justice, if That be obtained, in spite of old rules or old cases, Is it not so much the better for the subject ? especially if it be compassed in less time, and in a more summary way.

Let men, however, differ ever so widely in other respects, I hope for the peace of the community, that the trials which gave rise to this letter, will never be forgotten, and that unlearned men will acquiesce in the respectable authorities which I have quoted, and cease to reflect upon government, or the ways of administration and publick justice. In God's name, what business have private men to write or to speak about publick matters ? Such kind of liberty leads to all sorts of license and obloquy, the very reverse of politeness ; and the greatest man, be he ever so cautious, if such things are endured, may be traduced.

But



But what need I say any thing more upon this head, when both Houses of Parliament have lately expressed their detestation of libellous offences so strongly, as to put the writing of a libel upon the footing of an *actual* breach of the peace, and not merely of the doing of something that may, by possibility, produce a breach of the peace, or that tends to, or may excite people to break it. Whether any body is, or is not, provoked by writings under this denomination, to do any thing in consequence thereof, such publication alone (as I conceive) is nevertheless, within the spirit of their resolution, to be proceeded against as an *actual* breach of the peace. So that if any Member write any thing that reflects upon the Administration, the Attorney General has it in his power to denominate what is so written a Libel, to file an Information *ex Officio* (that is, of his own mere authority, without leave from any Court of Law, Presentment of a Justice of Peace, finding of a Grand Jury, or information upon oath from any person whatsoever) against the supposed writer, and the Court of King's Bench will thereupon immediately grant a warrant for his apprehension, and he will be obliged, by virtue thereof, not only to find bail, that is, pledges for his appearance before a Jury, to try the truth of the charge; or, in other words, to submit the matter to the judgment of his country: but also [as I collect from the arguments used upon the occasion] to find sureties for keeping the peace in the mean time, as a creature of so violent and pernicious a disposition, that the world cannot be in safety, if he be permitted to go at large, without very sufficient caution and assurance for his peace-



peaceable demeanour therein. If any Member of Parliament then refuses to find such securities for his future good behaviour, he will be committed till tried, and if he should be acquitted of the charge by a Jury, who should conceive that he never wrote or published what was charged, or that what he wrote was no libel; he will nevertheless be entitled to no amends upon the score of his imprisonment: but in the first of these cases must take what has happened for being of so suspicious a character, and, in the latter, regard it as the mere political consequence of treading so near upon the borders of sedition. By the simple charge of a libel in an information by an Attorney General, all this may be brought about, and any representative of the people instantly lose his privilege of parliament, and be arrested forthwith. All the Judges, indeed, before whom this question first came, were unanimously of opinion, after taking several days to consider thereof, that the privilege of Parliament was not thus at the mercy of the King's Attorney General; but, they were all of them mistaken, and let me add not a little aspersed and ridiculed, (notwithstanding the old and reverend intrenchment of dignity and solemnity with which their offices are defended, and the oath under which they execute them) for pretending to decide about privilege, and for presuming to construe the words of a resolution of either house, although they were legal and technical words; and in particular for so rash, so erroneous, so unworthy, and so unbecoming a determination as this was. Now, if this be so in the case of a Member of Parliament, who is a constituent part of the Legislature itself, How can



any Particular think himself safe in calling in question with his pen, any action of a Minister? And, Why should he? The advantage of inoffensive speech or writing, and of absolute submission to government, is so great, that I am sure every man ought to rejoice in such wholesome regulations. The obliging a supposed libeller to find sureties for the peace, is indeed an admirable stroke; for, perhaps, a slight subsequent error of conduct might induce a Judge to be of opinion that a man had forfeited these pledges for his good behaviour; or, at least, might be sufficient to involve him in a long and expensive litigation with the Crown. A man once charged with writing a libel, might be easily caught this way, whatever should become of the original prosecution on the libel itself. It seems to me to be really an excellent device for keeping the scribbling race from meddling with political questions, at least from ever drawing their pens a second time upon such subjects. All the reasons, I suppose, that wit, ingenuity or learning, could invent in behalf of parliamentary privilege in the case of the mere charge of a libel, may be seen, by the curious examiner into this point, collected and set in a strong light in the late protest of some discontented Peers; and yet, altho' all these very reasons were urged at the time *viva voce*, a Majority of Members in the two Houses, in this country of Liberty, being overcome by the still more cogent reasons given by the Ministry, concurred in declaring that *privilege of parliament does not extend to the case of writing and publishing seditious libels, nor ought to be allowed to obstruct the speedy and effectual prosecution of so heinous and dangerous an offence.* It was the more  
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necessary, indeed, to come to such a resolution, because there was no express case adjudged in the Courts below, wherein sureties for the good behaviour in matters of libel had been enforced, when opposed by the party accused, altho' three or four cases of private men, not members of either house, had happened within the memory of all the great Lawyers now living, where surety for keeping the peace had been strongly insisted upon by the Attorney-General, and refused by the supposed libellers, and wherein, in order to try the point with the Crown, these last, whilst in custody, sued out Writs of Habeas Corpus, and upon the Attorney General's desiring and obtaining time, but not coming in consequence of it, to make good the point for the Crown, demanded and obtained their liberty thereupon. In particular, in the case of Mr. Amherst, the author of the Craftsman, after precedents had been diligently searched into, and, at a prodigious expence, of both sides, the Attorney General did not give up the matter until the very evening that it was to have been argued before all the Judges in Serjeants Inn Hall. It was too the universal persuasion at the time that the point was not even then relinquished, until it was discovered the majority of the Judges were of opinion that sureties for the peace, or good behaviour, could not be demanded from any man upon the mere charge of a libel. Indeed it is the prevailing notion, at this instant, that the greater part of the present Bench are of the same opinion; although this cannot be positively known, as the matter has not been in judgment before them, and the House of Lords did not

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think



think it expedient to call for their opinion upon the point. This, however, is certain, that one very illustrious Judge, who had himself been of counsel for the supposed libeller, Mr. Amherst, was so far from being clear in this circumstance, that he declared to their Lordships upon the occasion, “ should the like point be ever mooted “ before him, he would, he was resolv’d, call “ in all the other Judges of England, and have “ it most solemnly argued, and take all their “ opinions thereupon, as upon a thing of consequence that ought to be settled:” and, yet his memory is so extensive, and his attention so great, to matters of political concern, that I make no doubt but his Lordship still retains all the precedents he formerly gathered, and very well knows of what import they are. What rendered this new parliamentary resolution still more necessary, was the misconstruction put by all the Judges of the Common Pleas (the only Court before which the same had ever come) upon the words of the former resolutions of parliament with regard to privilege. This Common Bench had considered the cases where surety of the Peace could be required as cases always of *actual breach of the Peace*, which they did not conceive a Libel to be, whatever its tendency was, or effect might be, upon other people, that is, upon those who were not the authors or publishers. But, they are now set right in this matter, with regard to Parliament-men at least, for no Member of either House (as I apprehend) is at present intitled to privilege from imprisonment of his person for refusing to furnish securities for his good behaviour, when charged with uttering a Libel;



Libel ; whatever may be the opinion of any common man who should hereafter be so charged, and, like an obstinate fellow, make a stand, insist upon the contrary, and have the point solemnly argued in the Court of King's Bench. The Lords, suitably to their dignity, determined this question themselves, without calling in the advice of the Judges ; for, though the words to be construed, were legal and technical words, yet, as they were made use of by their Lordships, and related to privilege, they held it beneath the Peerage to call for Judges to expound their meaning. The Peers, therefore, adopted the resolution of the Commons ; neither of the Houses conceiving they thereby broke in upon the rights of the people of England at large, in thus subjecting their Representatives to the restraints of a King's Attorney General, or gave up thereby any part of their own independency on the Crown ; as not believing (I presume) that any Attorney General would be so hardy as to file Informations against Members of either House, on the suggestion of their being Libellers, and thereupon at any pinch, or critical time, imprison their persons, merely for the sake of preventing their attending any particular vote or debate ; altho', perhaps, an able Attorney General might contrive so to do impunedly, *colore officii*. But such a case, in fact, is never to be supposed by any man of the world, who is thoroughly well bred.

Some late Sermons, which I have heard of, and a sensible, little ecclesiastical piece, in one of the News-papers (the Gazetteer) of this day, signed R. M. makes me hope and think, nay, foretel



foretel, that the Pulpit will soon lend its sacred aid to the establishment and corroboration of a perfect harmony and peace among ourselves, and a Loyal and Christian submission to authority, and the powers above us. Indeed, the High Church always used so to do; and for that reason has ever gone hand and hand with loyalty; infomuch that I remember the time when a great many of the present courtiers joined them in their healths; the first toast after dinner being constantly *Church and King*; and perhaps, from thence did these Gentlemen so universally, at that time of day, bear the name of Honest Men, whatever such ludicrous wags as Mr. Wilkes may have since flung out to their prejudice. R. M. is, in my opinion, very properly led by the present factious discourses against the late peace “ to lament the miserable situation of  
 “ a people governed more by the caprice of  
 “ party, than by that obedience to our Prince,  
 “ which the principles of Christianity (from an  
 “ observance of which, we alone hope for happiness hereafter) so strongly persuade us to;  
 “ and which naturally prompts him to propose  
 “ this question: Whether a compliance with  
 “ the Divine Will, as revealed in Scripture, if  
 “ we pay any regard to it, is not more consistent with our peace of mind, permanent happiness and security, than any other principle  
 “ we possibly can be governed by?” This Divine, therefore, makes it a part of Christianity to be obedient, as I apprehend, to every Administration. Now, if all Parsons would preach the same doctrine, some political, as well as spiritual, good might arise from frequent church-going.



going. And I believe every body is ready to acknowledge, with a great Prelate, the truth and excellency of *The Alliance between Church and State*; and is therefore obliged to him for applying his episcopal abilities, not long ago, in drawing up a curious piece, wherein he asserted, that the late peace was *adequate* to our successes, and then cajoling an old illiterate gentleman into transcribing and sending it for publication to his Great Patron, and thus surprized him at once with an instance both of his good faith and gratitude, of his *private and public virtue*. A learned author, but a little while before, in writing *upon Grace, or the office and operations of the Holy Spirit*, did, very prophetically, in my opinion, say in his Preface, “ *I have a Master above, and I have one below* ;” and, then dismissing the doctrine of public virtue, proceed to the canon of private or “ social virtue,” and declare that “ the most sacred of all private ties, “ are Friendship and Gratitude.” Indeed, if the outside of man be any type of his inside, I think there is an amiable openness of Look and Deportment in this Churchman, which suits his behaviour most exactly. In short, his principles seem to me but the true copy of his countenance. One cannot truly deny that he said of a late Minister, “ He had the power and disposition to support “ the honour of his country ; and that the people’s following him was not the wonderful “ part of the story ;” but it must be remembered too, at the same time, that his Lordship concluded his preface by recommending a “ spirit of true piety towards God,” and thereby submitted himself, with becoming resignation, to



the decrees of providence ; and for that reason, I presume, has preferred for the present life, as in duty bound, his Master above, to his Master below. One need not, therefore, be an extraordinary Critic to find out the true reading of the Prelate's text, or be at any loss in expounding the doctrine, either exoteric or esoteric, which he holds forth. Some readers, I allow, dissent from my interpretation, form a very different idea of his *Master below*; and will have it, that this Gentleman has a considerable influence over him at present ; however, as theirs is a malignant, unchristian exposition, I shall follow the rule of law ; and, where words are capable of two senses, take them *in mitiori sensu*. But there is no end of selecting particulars from the Reverend Bench, to prove how much, by their actions and discourses, they illustrate *public virtue or piety, and private friendship or gratitude*. In short, they are always for recommending the blessings of concord. It is, I trust, the principle of Piety which makes them concur so cheerfully, and unanimously, for the most part, with all Ministers, observing no worldly distinctions of persons or parties. They live in brotherly love with all Mankind, and worship alone the father of peace ; or, to speak more according to their own emphatical language, the Great peace-maker. And indeed, their conduct is of much force, and must make a strong impression, as it is always accompanied with a decent, holy deportment ; which induces the beholder to consider it as proceeding intirely from the true spirit of the Gospel. And such among the best men is the force of good example, that  
you



you scarcely ever see two Bishops dissenting from their brethren in a debate. They are ever resigned to the will of the Great Disposer of all things. Twenty-six such men, who would not only act unanimously, but be earnest also in their respective dioceses in preaching up unanimity and true concord to all men, and in recommending the same doctrine to their inferior and subordinate Clergy, might, in my poor apprehension, do a great deal of good in a few years, in these degenerate times; and therefore it is with infinite pleasure that I see an appearance of Piety so encouraged and countenanced at Court, and the spirit of the Great Lord so strongly diffusing itself, by degrees, in this kingdom. We have had nothing like it since the time of Charles the First, excepting a little gleam, of short-lived duration, under Queen Anne. I do not therefore discommend R. M. for labouring in this his vocation, even in the Common Newspapers; as I know that devout Divines say, one should be instant at all times, both in season and out of season, and in all places, in preaching up the healing doctrine of peace, and good will to mankind, and in exhorting all men (to borrow the words of a learned, but subordinate, Judge at the conclusion of his charges) to fear God and honour the King.

I cannot help remarking, that people are by far too apt, at all times, to believe amiss of great men, and to talk, and even to write at random, to their disadvantage. Not long since, Lord Chief Justice *Pratt* was abused in one of your news-papers, for having approved some illegal General Warrants, which issued whilst he was

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Attorney



Attorney General from Mr. Secretary Pitt's office. Now, the fact is, that he never was consulted at all, and but once even spoke to, about any Secretary's warrant; and then, as Mr. Pitt avowed in a certain august Assembly, "his friend, the  
 " Attorney, told him, *the warrant would be ille-*  
 " *gal, and if he issued it, he must take the conse-*  
 " *quence*; nevertheless, preferring the General  
 " Safety in time of war and publick danger to  
 " every personal consideration, that he run the  
 " risk (as he would of his head, had that been  
 " the forfeit, upon the like motive) and did an  
 " extraordinary act, against a suspicious foreigner  
 " just come from France; that he was ready to  
 " answer it before his country, if they called him  
 " to an account; and that, in his opinion, the  
 " apparent necessity of the thing, and the real  
 " exigency of the time, must always be the test,  
 " and alone vindicate, and be the safeguard of  
 " any Minister, who, at a crisis, exceeds the  
 " known laws of his country." By the bye,  
 Why this Minister, on account of his popularity,  
 or this his bold defiance, should not be brought  
 before the Public to answer for such a breach of  
 the law, notwithstanding his pretences of its being  
 in the cause of the nation, in time of actual war  
 against their most formidable enemy, and not for  
 the sake of wreaking a personal resentment against  
 any particular party-writer, I do not well see. No-  
 thing but the present Ministry's lenity, together with  
 a peaceableness of disposition arising from a natural  
 firmness of mind, and a consciousness of real  
 power, as well as an unwillingness to be severe,  
 where no immediate ill consequences followed,  
 and where the people did not cry out, can be any  
 thing



thing like reasons in my apprehension. Such principles must make every body love the heart that produces them ; but I am afraid, that too great indulgence in these cases is apt to breed many irregularities. It is a fact, I know, that no odious Crown-prosecutions were carried on, during Mr. Pitt's administration, by his friend the Attorney General ; but that is not enough : no illegal arrests should have been made by that Minister, nor General Warrants issued in any case whatsoever for the seizing of persons and papers without naming any body, nor even for the seizing of papers (altho' the person were named) in the case of a libel. Otherwise, the usage of a secret Office may hereafter come to be alleged, by one set of people, for the law of the land, and be candidly admitted by others (who affect moderation, and never directly oppose or condemn any thing from a throne) to be a justification. Whereas all lawyers know full well, that nothing purely illegal can, in law, be justified ; nay, the law-maxim goes so far as to say, *Ignorantia legis non excusat*, as every man is expected to know the laws of his country : and yet circumstances of ignorance, haste, inattention, and custom, will make any Gentleman, or Court, after conviction and condemnation, readily consent to pass a slight censure, and set a small fine upon a penitent culprit ; that is, in reality, to indemnify, by excusing from punishment ; in short, to pardon, as far as may be, provided the person, upon whom this breach of the law was committed, be no great sufferer thereby. A Jury *ex debito justitiæ*, must find a man guilty, if the criminal charge against him be completely pro-



ved ; but no Court of Justice, when Judgment upon the Verdict is moved for, will fine a man more than a few shillings, upon its appearing from the whole of the evidence (which, by the bye, is always reported by the Judge who tried the cause) that the Defendant did not know he had been acting against law ; and more especially if there was a want of proper advice at hand, a necessity of doing something, and no appearance of passion, violence, and precipitation in the transaction. The higher the station of the person is in the state, the greater will be the insult undoubtedly ; as more circumspection and caution, and the best of legal information, and the most regular proceeding, will, in such a case, be expected, out of reverence to the state and constitution itself. In a House of Parliament, after inquiry, and finding that nothing in defiance of the laws was designed, no more, I should imagine, than a censure would be aimed at by any moderate members, and no bill for inflicting pains and penalties, or articles of impeachment be brought in, or even thought of ; unless it appeared that the criminal was too great for ordinary Justice, or avoided and delay'd it, or else play'd with it by chicanery and subterfuge, that is, attempted to elude and frustrate the sanctions and compulsions of a Court of Justice, and, by an abuse of the law of his country, to pervert its fines and penalties by the hand of power, and the collusion of office ; instead of throwing himself upon the mercy of the Public, asking pardon, and confessing his error, and thereby atoning for what he had done, for the stab he had so unadvisedly made at the vitals of the con-



constitution itself. One need not, however, suppose cases to shew that Mercy is commendable at all times, especially if it should chance that the person, principally concerned in the outrage committed, should be universally allowed to be one of the fairest and most amiable characters of the age, whatever his Attorney or Attornies might be. But, strictly speaking, Injustice cannot be justified, let it be committed ever so unwittingly, by any plea in law whatsoever. A man can only justify what he has done when he has acted as the Law permits under special circumstances ; and when he can do that, he has no need of pardon or mercy. On the contrary, when he has done what cannot be justified under any circumstances, although it may be from ignorance, and not from malice, yet he must be found guilty ; but he will always, nevertheless, be suffered to give the favourable particulars of his case in evidence, that they may be reported, in mitigation, that is, in alleviation of his fine and punishment, to the Court. A man, who has at any time, or in any way, been misled by foolish or iniquitous precedents, like so many *ignes fatui* ; or by any, but wilful, ignorance and presumption, is the proper object of pardon with the Crown, or of mercy and very slight punishment with the Court of King's Bench ; where too he will never fail of meeting with it.

Excuse this long dissertation on a very plain point ; for, according to my observation, a certain truth is not always sufficiently attended to, namely, that the manner of doing a thing is oftentimes of more consequence than the thing itself. I do not venture to say thus much, because



cause Mr. Pitt is out of power ; I should have said the same had he been in. I am not in the intimacy, much less in the pay, of the present, or any other, administration. In short, I am of no party. A man may think very differently from the great men of either side, upon many important points ; and yet have an extremely good opinion of the integrity of several who are in, as well as of several who are out, of place. Their actions and management are alone the object of disinterested speculations ; and great allowances are, I know, to be made for the mistakes, obliquities, and even injustices, of ministerial, political conduct in any great kingdom. A Jobb, or even the waste of public treasure, is a temporary, and much less evil, than any violation of law that lays the foundation for arbitrary rule, and saps the constitution to its bottom. In short, to use the expression of a consummate lawyer upon the same subject ; “ In such extreme cases I like to speak out ; and what I am afraid of is the Power of the Crown.” It is the consequence of establishing dangerous precedents, that is so much to be dreaded, when Secretaries of State depart from the Laws to attain a favourite point, and the King’s Attorney General either sets up a pretended prerogative for a defence, or else devises means for the smothering or defeating of all prosecution : in a word, when the servants of the Crown use the utmost of their abilities, and their power of office, to prevent and to baffle the most regular pursuits of Justice, and thereby exceedingly aggravate the original offence. If an alarming Practice has been once brought to light, and inquired into,

and



and not condemned, although clearly unwarrantable; it will look to posterity as if, upon examination, it were found to be legal, or, at most, but dubious. This, therefore, becomes the great grievance; for otherwise, perhaps, no indifferent man would care at all for the fate of the person who occasioned the question. So common, indeed, is it for mankind to err without design, in the exercise of legal power, that, by a late act of parliament, all Justices of the Peace have a month, after notice of their having abused their authority, to make or offer amends to the Party injured, before he shall be at liberty to bring any action for the recovery of damages. Now, Great Ministers are hardly more knowing in the Laws, or more cautious in the execution of their offices, and might therefore very well expect a similar indulgence. The practice, in truth, in the Secretary of States offices, has always been to ask no advice at all, but that of their own law-clerk, and to issue these General Warrants as occasion required, and to take the form from any precedent that happened to be among the papers of their office. And a State Law-clerk knows even less of the law than an Attorney, or any Solicitor to the Treasury. However, if any person within the last description, taking upon himself to do the legal part, should not only once execute an illegal warrant, but should a second time, and some days afterwards, when it was thought proper to take up other people, upon being desired and directed to make use of fresh warrants for the purpose, officiously and arbitrarily say, "No, no, the old will do well enough;" and should there-



thereupon, without any regard to decency, or the appearance of law, thus outrageously violate the subject, with old process *functus officio* ; I should imagine he ought not only to be dismissed from his employ by any Ministry, but be expelled from every society or assembly of which he was a member, and be branded besides by the Public ; let him be Attorney, Solicitor or Counsel, or half one, and half the other, and perjured or not, at Westminster or Guilford, either recently or many years ago.

With respect to the Warrants publicly complained of, it was notorious, and must be a matter of satisfaction to every body, that not one of the present Ministry attempted to justify the legality of them ; they knew too much of the law from their early studies, and had too much good sense to attempt any such thing. In reality, their patriot hearts melted within them, and by degrees disclosed and brought forth their sentiments to the contrary ; excepting however the Person vulgarly styled, in Law-Latin, *Diabolus Regis*, who said, “ He had formed his opinion, but would keep it “ to himself,” that nobody should be the wiser or the better for it ; imagining, I presume, he should act out of character, in that place, by doing otherwise ; or surely the politeness of his disposition would have led him to indulge the Commons of England, when summoned and met as the grand inquest of the nation expressly for inquiry, consultation and advice, with the best of his thoughts and judgment upon the subject. The great Lawyers and Advocates for the Crown, the ablest Council and Doctors, even joined to amend the question first proposed by the opposition, and  
altered



altered it again and again, in order to render it more explicit, infomuch that every by-stander at first imagined they intended to vote for it also ; but, in fact, the whole of this their dubious and seemingly perplexed proceeding, arose from their anxiety for a full and fair discussion of the legal validity of General Warrants, to the end, as I conceive, that all the world might see (as, indeed, they did at last) that nothing at all could be said in support of them. No end could be more laudable, or more perfectly answered ; for, after the utmost researches, no one case could be found by the most learned, diligent and laborious inquirers, wherein such a warrant had been adjudged legal. By *Magna Charta* (the Great Charter of English Liberty, so much talked of, but so little read) a Succession of Kings, with the advice of their Barons and Bishops, and wise and great men in Parliament, declare and promulge to all the people of England, *Nullus Liber Homo capiatur, vel imprisonetur, aut disseiziatur de libero tenemento suo, vel libertatibus, vel liberis consuetudinibus suis, aut utlagetur, aut exulet, aut aliquo modo destruatur ; nec super eum ibimus, nec super eum mittemus, nisi per legale iudicium parium suorum, vel per legem terræ. Nulli vendemus, nulli negabimus aut differemus rectum vel justitiam.* How, therefore, could any but an illiterate and unthinking man conceive, that in time of perfect tranquility both at home and abroad, a General Warrant which named no-body, could be deemed *Lex Terræ* or *Judicium Parium*, so as to authorize the seizure and close imprisonment of a *Liber Homo*, without some notorious change of the constitution in this capital point by King, Lords,  
E and



and Commons? A warrant *truly* that commissions three or four common Messengers to take up the Authors, Printers and Publishers of the Libel, and bring them together with their papers before a Secretary of State! Could this be Law, which but to state in a country, not governed by will or pleasure, is to refute; three or four of these Greyhounds, or ordinary Messengers, having nobody named in such warrant, might by virtue thereof have taken up ever so many persons in the kingdom, because, forsooth, they suspected them to have a hand in the publication! without any information upon oath, or shadow of positive proof; and have then hurried them away directly to the Issuer of the Warrant, who might thereupon have committed them all to the closest confinement, out of possibility of access to any one friend whatever.

Even if somebody had been named in the warrant, must there not be an Information upon oath, of his being Author, Printer or Publisher?

And if somebody were named and alleged to be charged upon oath with being Author, Printer, or Publisher of a Libel; could his Papers be seized? Since the time of Algernon Sidney, and the reign of the last Stuart, every man that has the faintest notions of Law or Liberty, must know the position *Scribere est agere* has been condemn'd, and that the mere writing and leaving in one's own study, any discourse whatever, is not criminal, it being no act which the Law takes notice of; for, any man is at liberty to think, and to put what thoughts he pleases upon paper, provided he does not publish them. In the case, therefore, of a Libel, this inquisitorial power of ransacking  
papers



papers will not be endured. It would lead to the seizing of a man and his papers for a libel, against whom there was no proof, merely slight suspicion, under a hope that, among the private papers of his bureau, some proof *might* be found which would answer the end. It is a fishing for evidence, to the disquiet of all men, and to the violation of every private right ; and is the most odious and infamous act, of the worst sort of inquisitions, by the worst sort of men, in the most enslaved countries : It is, in short, putting a man to the torture, and forcing him to give evidence against himself. For, if a paper be found in any house, in the hand-writing of the Master, which should contain the words of the printed Libel, there is no doubt but any Jury, upon proof of his hand, would find him the author ; and this sort of evidence is permitted in matters of Misdemeanor ; although, since the reversal, by Act of Parliament, of Algernon Sidney's case, that is, since the dominion of the Stuarts and their Judges, no proof from similitude or comparison of hands, notwithstanding the criminal writing be found in the custody of the person charged, has been deemed admissible evidence in capital cases. Nay, if it were once established for law, that, on the mere charge of a Libel, by the Attorney General's filing an Information *ex officio*, a Secretary of State might grant his warrant for seizing the person thus charged, together with his papers ; it would soon become usual, under the pretence of better keeping the Peace, to exercise this power in very ordinary cases, and without any hesitation or scruple ; and, by degrees, men known to be in opposition to the



Ministry, or in intelligence with those who were, would have their studies rummaged, whenever a galling or abusive pamphlet came out, published, perhaps, on purpose ; under a frivolous pretence, that they were rumoured to be the writers or editors of it ; but really and truly, for the sake of getting at private correspondence and connections, and for the business of disarming opposition, or defeating impeachment. The Earl of Danby's seizure of Mr. Montagu's papers, will shew what may be the true motive to such a step. And, if the *charge* be a libel only, it matters not with what additions you endeavour to brand it, whether scandalous, false, seditious, or treasonable : call it what you will, for the sake of exciting the greater detestation, it is still, in fact, but a Libel, and you *inform* against it merely as such. If you mean, that it should be treated as High Treason, you must *charge* it as High Treason ; as was the case of reading a paper on Epping Forest, to a multitude of people, exciting them to rise and take up arms against the Government itself ; than which, no stronger overt act of High Treason can well be committed. No lawyer, however complaisant, would talk of this last as the case of publishing a Libel only, no more than in speaking of a Rape, he would call it an Assault, or, in speaking of Murder, he would style it a Battery, (although, without doubt, *omne majus in se continet minus* ; ) unless he were talking to unlearned people, who knew nothing of the nature or species of crimes, after some premeditation, with a view to deceive them, and to induce a belief, or, at least, raise a doubt at the time, that a man might be equally hanged for either.



either. Now, in the case of High Treason, so dangerous to the being of the whole state, it may not, perhaps, at particular junctures, be improper to support, or indemnify at least, even Secretaries of State in the seizure of papers, and of every thing else, however illegal, that may possibly serve to a discovery and conviction of the Traitor. The doing of what may tend to dethrone a King, is of consequence to every individual; but, the dethroning of a Minister is not quite so momentous a matter.

And, after all, if in the warrants the Persons to be seized had been *named* (and not left conjectural to the discretion of the King's common Messengers;) and it had been alleged, that they were *charged upon oath*, and there had been *no direction to seize papers*: under what law, or colour of law, could they be committed to *close confinement* and imprisonment (*arcta custodia*) upon the *charge* of a *Libel* only? Another very great and important point for a constitutional inquiry! Is a man charged only with writing and publishing a Libel, to be deprived of his liberty at once, and so shut up in gaol, that no friend is to have it in his power to come near him? Will not common confinement be sufficient custody in such a breach of the Peace, when charged only, and that *ex officio*, and before one tittle of proof be given, and this too in the case of one of the Representatives of the Commons of England? I cannot help saying, I am surprized that this last point has never been agitated; for it seems to me to be of very great consequence. I am sure it was not owing to the Ministry, for they appear to have been very ready



dy and desirous to have agreed to any question that might tend to the thoroughest discussion of every part of this vexatious case, for their own information as well as for the benefit of the public ; and it is this persuasion which induces me to throw out my private and impartial thoughts upon the subject. It is under such mild, intelligent and inquisitive administrations, that these great constitutional points can alone be fairly discussed. Many of my difficulties have been very satisfactorily entered into, but that of the close imprisonment has not, I think, been yet examined.

As to the truth, candor, and legality of the return to the first *Habeas Corpus*, by those who had seized and carried off the Libeller and his Papers, namely, *that they had him not in their custody*, having just before (and after being told that a *Habeas Corpus* was coming for him) hurried him away into other custody, in short, to the Tower, I do not mean to put any question ; although, perhaps, a Court of Law might not hold this to be a satisfactory reply to a peremptory order for bringing the body of the Person seized, together with the cause of his seizure ; because, if it were, every *Habeas Corpus* might be easily eluded, by only changing the custody of the Prisoner from time to time, *toties quoties*. A Court might expect, therefore, to know how he was disposed of, and not to be dodged at this rate, in a matter where the liberty of a Free Man was at stake ; but deem such an answer or return evasive, fraudulent, and a deliberate mockery of Justice. Whether the *close* prisoner of state was treated well or ill by his gaolers, is of little or no moment ; and “ the asking him, the next morn-  
 “ ing,



“ing, whether he chose to have a clean shirt, “shoes and stockings,” or even *his shaving things*, is too ridiculous to be noticed; the sole question here being, By what *right* or *colour* of law he was ordered to *close imprisonment*, and debarred from the access of his own friends and servants? and not what personal reparation should be made to him for the bodily injuries he had sustained thereby. But, as I said before, I shall not ask any questions upon this head; although the whole of the transaction is very fruitful of points from the beginning to the end, in every step of the proceedings, and of important points, which nearly and intimately connect with the Constitution, and touch the liberty of every man living under it.

The Representatives of the Commons of England took up the consideration with spirit, and the great men in office, to give them their due, expressed a natural solicitude through the whole progress of the Inquiry. When the illegality of the Warrants was made clearly to appear, and any man was defied to support their lawfulness; and it was even said, that it would be an insult upon common sense to pretend so to do; the Ministry, very consistently, moved to adjourn, declaring the house was no place for the determination of points of Law, (unless privilege, I presume, were connected therewith;) and thereupon the House did adjourn, in order to let matters stand upon the old footing. Indeed, out of compassion to two worthy, but ignorant, Members, who stood accused for executing such illegal Warrants, they came to a resolution to justify and acquit them, under the  
special



special circumstances of the case; and, perhaps, even this they might not have done, had not a great, but moderate, Lawyer, not long before in high office, and then appearing, as it were, in opposition, said he “ candidly thought, all things “ considered, the circumstances would amount to “ a justification.” It is otherwise not improbable the present Ministry, so open were they to conviction, would have found them guilty (that is, of acting contrary to the Laws, in executing a Warrant fundamentally illegal) upon this well known principle, so much before dwelt upon, that *nothing illegal in itself can be justified*, but have immediately afterwards declared the practice of their office, and the circumstances of their case, to be so strong a plea in mitigation of damages, that they thought it the properest case in the world for mercy; and have therefore excused them from all sorts of punishment. But such was this candid and much reputed Lawyer’s influence and weight, with both parties, at that juncture, that they all submitted implicitly to what he had only dropped for law. Nay, the Ministry even offered, at last, to bring in a bill for settling the power of Secretaries of State for the future, upon a hint of the propriety thereof, that fell from the same candid Lawyer. And, by the bye, How could a party, at whose head was a chief, that acknowledged he had, when in office himself, knowingly issued an illegal Warrant, because he imagined the safety of the commonwealth required it, reject the indulgent offer of a bill for establishing for ever such a power in Ministers, under some few conditions, to be guardedly worded? Nay, when such a Bill was  
actually



actually moved for, by a man as much an independent as any in Westminster, a grave and learned Privy Counsellor, who distinguished himself about the years 1743, 1745, and 1746, as much in behalf of the Protestant Religion as of the Revolution, in support of all Loyal Britons, sometimes as a Counsel, and sometimes as a Justice of Peace; but never more conspicuously, or intrepidly, than by *presenting* the *Association*, in the year 1745, as dangerous and illegal, as an actual breach of the peace, and as coming very little short of Treason itself; the perverse and untoward Minority, instead of shewing any respect or deference to the person of this wise Senator, loyal Englishman, and faithful Counsellor, tho' the solemn oracle too of a respectable body that had supported the late Ministry of Mr. Pitt throughout, expressed their contempt of his proposition, by leaving the House to a Man. It is true, the worthy Knight spoke with a good deal of phlegm, and an air of indifference and coldness, but that was always his wonted manner; and as to his not being seconded warmly, and in downright earnest (as it is called) That proceeded (as I guess) from the Minister's not chusing to draw and word a bill of such consequence without the concurrence of those who had talked so much and so loudly upon the subject, not relying altogether, perhaps, even upon the candid Lawyer's attendance, although, in his usual, qualifying way, he had dropped that " a Bill might be drawn  
 " with such clauses, and so worded, as would  
 " answer the purpose, and that he would rea-  
 " dily lend his assistance therein, should such a  
 " one be moved and brought in, and a commit-



“ tee appointed thereupon.” The Ministry, most certainly, were not such poor politicians, as merely for conscience-sake, to force on a bill of so nice and difficult a composition, and so liable to be called, by the Malevolent, *An Act for giving more power to Ministers*, notwithstanding the largeness of their Majority. After being heartily slapped on one side of the face, obstinately to hold out the other to the like treatment, would be, now-a-days, a strange kind of primitive goodness. By the mere offer of such a bill (to borrow the expression of a certain talking Alderman) *liberarunt animas suas*. And who can blame Men, in times of clamour, for going no farther, and for a little wordly attention? Doubtless, they would be content rather to lie under an undeserved imputation of not being in earnest when they talked of a bill, and of their throwing it out merely as a tub for the Leviathan of opposition to play with, than enter into another long and hot field of disputation and wrangling, the end of which is not always to be foreseen; when at the worst, they are sure of having an acquittal for themselves, from the experience of what is past, whatever they do. They are not like some Ministers, who court a renown for their eloquence. They are very far from ostentation or outward parade, and talk modestly; yet, they can do the strong thing, when necessary, as much as other people, *Suaviter in modo sed fortiter in re*. But, is it not astonishing, that the Great Dictator, and his immediate followers, should shew a dislike to such a statute, or ordonnance as this, which might, in future, be a shield of defence for any thing so bold a Minister might venture



venture to do, should such another at any time ever arise? Perhaps a Majority in the House of Commons offering such a bill, may not soon be seen again; for we all know, that when the Peers had framed such a bill, passed and sent it down in 1692, the then Commons rejected it, “ thinking those limitations gave a legal power “ to commit, in cases where they were observed; “ whereas, they thought the safer way was, to “ indemnify the Ministry, when it was visible “ they did not commit any but upon a real danger, and not to set them any rules: since, as “ to the committing of suspected persons, where “ the danger is real and visible, the public safety “ must be first looked to, and supersede all particular laws.” I say, therefore, it is a rare thing to find a majority of members in a House of Commons disposed to grant such a bill; and such good humoured seasons are, one would think, to be caught at, and not slighted. It seemed to me a wonderful perverseness in the Minority. In short, the great personage who led them, would rather, I find, put himself upon his country, and run the risk of their disapproving what he had done on a particular exigency, than arm his successors in office with new powers, at present unknown to the laws, which might warrant them at any time in stepping out of the ordinary road of Justice, whenever they themselves might judge it proper so to do. And yet, surely, we can have no settled constitution without some such bill. But, from hence it is plain, that nothing will please people who are thoroughly forward, except it be something of their own choosing, and that too exactly in their own way. The



Minority must therefore thank themselves for having obtained nothing at all by their bustle.

Excuse this long deviation to a collateral matter, springing, indeed, from my main point, but making no part of it, and let me return to my original subject, I mean, the Doctrine of Libels. Now, to be ingenuous and wholly impartial, without respect of persons, I must confess I recollect one thing that calls in doubt the legal knowledge of a certain very popular Chief Justice, and that is his saying, when acting as Attorney General too, upon a motion in the King's Bench for an Information for a Libel against the Author of *The Sixth Letter to the People of England*, who was then prosecuted in the ordinary way for the grossest of abuse upon his late Majesty, his family, and the Revolution itself, "What I urge to the Court, is only to shew there  
 " is reasonable ground for considering this publication as a libel, and for putting it in a way of  
 " trial, and therefore it is, I pray, to have the  
 " Rule made absolute; for, I admit, and your  
 " Lordship well knows, (addressing himself to  
 " the excellent Lord who still presides there)  
 " that the Jury, in matter of libel, are Judges  
 " of the Law as well as the Fact, and have an  
 " undoubted right to consider, whether, upon  
 " the whole, the pamphlet in question, be, or  
 " be not, published with a wicked, seditious  
 " intent, and be or not, a false, malicious, and  
 " scandalous libel." \* It is true the Noble Lord

\* The reputed Author of this very piece, was afterwards found guilty, and punished accordingly, to the satisfaction of every body at the time; but, I have purposely avoided naming him, because it is the common report, that he has at present a good pension: And, there must therefore be some mistake in the matter, and I am unwilling to relate any thing that is not a notorious fact.



at the head of the Court, did not then contradict Mr. Attorney, and seize that opportunity of laying down authoritatively the law upon the chapter of Libels; but, I presume, that, out of respect to the Crown, he was not willing, at that time, to put down its principal law-officer, in his own court, in the face of the King's Bench; or, perhaps, there were other and better reasons which restrained his Lordship, or rendered it at that instant not so convenient or proper.

By the bye, it is a great happiness for the Police of this realm, and for the reformation of manners, that this same popular man's lot has carried him to preside over Common Pleas only. Juries are not quite so likely to err in mere disputes of *meum* and *tuum*. But, how would Crown-Prosecutions have been managed in such hands! Nothing, for certain, can tend so effectually to the preservation of good order, domestic peace and true loyalty, as the prevention of all invidious writing touching administration, by proper conviction and punishment of the Authors as libellers, that is, under the guise of law; and this can never be effectually done, if men of ordinary life and downright understandings, are to pass their own judgment of the matter, and that judgment is to be deemed the law of the land. For, I don't know how it happens, but the fact undoubtedly is, the generality of people in this country are much disposed both to laugh, and to rail at Administration, and not only to forgive, but to encourage and relish every ridicule, lampoon, or satire, published concerning them, insomuch, that news-papers principally subsist by the ingredient of abuse, and are read in every county of England with eagerness, and  
to



to the infinite discredit of the Great Men in Office. They cannot be brought easily to think, that any thing is said more than is merited, or that there is any harm in drawing the curtain, and discovering a Minister's most secret works ; in the exposing of his foibles or his iniquities ; or that the constitution is hurt by the writing of one man into, or another out of, place. They will not be persuaded, that such publications are designed as serious attacks upon the Throne itself, or to overturn the present Parliamentary establishment, and therefore will not condemn such writings as libels. And so far are they from understanding the law about this matter, that they cannot conceive how any man can be guilty of publishing a libel on the State, when he utters no more than the truth. In short, their wits are not subtle enough for the disquisitions and distinctions that are absolutely necessary for the coming to such a conclusion. Now, in such a commonwealth, the apprehension alone of what an ignorant or wilful Jury may do, if left to judge for themselves, is enough to make any man living, who really reveres a throne, turn pale ! It is shocking to every learned and dutiful subject, educated in the true principles of British loyalty and a hearty lover of his Church and King ; let who will wear the Crown !

Indeed, I have heard another thing, imputed of late to the same popular Chief Justice, and so well attested, that I shall venture to report it again, especially as it is in a point that clashes a little with somewhat which I have before advanced, and that is, that he does not seem to be fond of controlling Juries by the granting of new trials upon



upon every occasion, rather considering the practice as novel, and not much to be favoured; and that when the case was cited, wherein the great Law-authority I have before alluded to, spoke in disparagement of trials by Jury; he seemed quite surprized, and said, with a look of disapprobation, “ Why do you cite such cases before me, I have  
 “ been bred up in other principles, and am now  
 “ too old to change them.” This may be misinformation, and for my own part I hope it is; but, if it be true, I would with great deference presume to ask, Why we should not grow wiser than our forefathers in law, as well as in other parts of science, after repeated experiments; and, as new lights arise, correct our old prejudices, and even our old constitution, where expedient or necessary? In the name of common sense, What Gentleman would not rather have his cause tried intirely by men of science, (I mean the Judges who are named by the King at the recommendation of the Ministry, that is, of the first people in the kingdom) than by illiterate Country-fellows, common shopkeepers, or aukward Country Gentlemen, who may probably never have seen a Court? How can such men judge of any fact, relative to property, as well as those that have studied the art of reasoning, and been conversant in books and good company all their lives? And, in Truth, if I may be excused for hazarding my own opinion in this matter, however singular it may seem; when once we have got rid of Juries in concerns of property, we shall soon come to do without them in concerns of life and limb: And, till then we shall never have the Crown-trials properly managed, let Judges take what pains they will, and  
 state



state or sum up the evidence as they think good. For, as the Law now stands, let a Juror be ever so inflexible to the direction of a Judge, or adhere ever so obstinately to his own opinion; it is not in the power of that Judge to discard him, and have another sworn; nor even, when the next trial comes on, to “order the Officer, who calls the Jury, to “pass him over, if his name should again be drawn, “and to take care, that he be never more, upon “another Jury.” Nevertheless, let other peoples notions be what they will, I shall always think this to be a power much wanted by a Judge, at least by a Chief Justice; as I am persuaded, that the higher men are in the world, the greater will be the value they will set both upon ears and life. All important Crown-Prosecutions would then be conducted in the best manner, according to the will of the Chief Justice of England, who is frequently a Peer himself, and of great weight with the Ministry; is always a Privy Counsellor, sometimes of the Cabinet, and intitled to the ear of his Majesty, and of course infinitely above all prejudice, and every thing else that is low and vulgar. Under such direction, no man would be found guilty, or lose his life, from error or ignorance. And the Lawyers hold it for a maxim, that the King is interested in the life and health of all his subjects. In my humble opinion, there is some small strength in these arguments! To say nothing of the disagreeableness, tediousness, trouble and precariousness, of all trials by Jury, composed of nobody can tell whom.

I shall not wonder to hear myself traduced for gross partiality to the present Ministers; but altho' men are often mistaken about their own appear-



appearance, I flatter myself, that I am as impartial as any writer whatever against the Administration, and I hope the candid reader will not think I strain any thing in their favour, altho' I profess myself inclined to have the world see how much this kingdom is obliged to them in the particulars which I have touched upon. The current of News-papers is too apt to be set strongly against every Minister for the time being; and therefore it is but common justice to speak what one thinks in their favour. I have refrained also (as far as I can judge of myself) from aggravating the features of the opposition, where obliged to take notice of their proceedings, and have by no means exaggerated their faults, or even mentioned them where I could well avoid it. On the contrary, I have vindicated them from aspersions, when truth would permit it. I little expect therefore to please the zealots of either side, but, I trust, the sober part of both will attend a little to what an obscure, but impartial, man may candidly offer to their most serious consideration. The civil government and the interpretation of the laws and charters of the land, should ever be attentively regarded by all moderate men, let the factious and ambitious of either party struggle as much as they will about who shall be foremost in favour at St. James's, or how to get the best place. A trick, a fraud, or a jobb, is nothing more than a transitory evil; but, a solemn decision on any constitutional point, is what will be either a lasting security, or an irreparable infringement, of the liberties of us and our posterity to the remotest generation. When a Ministry absolutely do nothing, no man should call them rascals;



cals; but when they do what is praise-worthy, every man should be glad to stand forth in their commendation and support. I dare not, however, like *A Loyal Briton*, in the *Gazetteer* of the 21st and 26th of this month, praise the moderation of the present Administration, merely because they have not proceeded so far as Q. Elizabeth would have done, who (according to this writer) in the plenitude of her arbitrary sway, instead of gently driving Mr. Wilkes into exile, by the soft methods of prosecution both within doors and without, above stairs and below, would have let us  
 “ seen him before this dangling by the neck at  
 “ Tyburn, and, perhaps, the Lord Chief Justice,  
 “ that declared her Secretaries Warrants illegal,  
 “ by his side.” Now, altho’ I most sincerely rejoice in the plenitude of power, which, according to this writer, the present Ministry enjoy, I dare say, however, they do not desire this sort of comparative merit may be alleged in their favour. They are fully sensible that Mr. Wilkes, as one of the representatives chosen by the people of England, should be treated with decorum, and a Judge (so long as the laws continue of any force) with great respect, where he acts in his proper department, and concurs in opinion with every other lawyer of the Realm, either on or off the Bench. Especially as no man had the smallest reason to surmise there ever was the least concert, connection, or even acquaintance between that profligate libeller, and this great lawyer. Indeed, how different too their conduct! The one, uncalled upon, wantonly and officiously wrote of every body and every thing, as his own lewd fancy happened to comment upon the occurrence



or anecdote of the day. The other, in his high and reverend province, in pursuance of his duty, and agreeably to his oath, pronounced his opinion upon a matter of law, brought judicially before him, with a gravity and weight equal to any of his most venerable predecessors, becoming his function, and to the universal approbation of every lawyer, and of every man in England. Moreover, the Council for the Crown could, had they not acquiesced in the Chief Justice's opinion, have very easily brought the same matter in judgment before the Chief Justice of England himself, nay, even in the last resort before the House of Lords. Another well known truth, which, probably, the *Loyal Briton* has not yet heard, is, that Mr. Pitt himself neither has, nor ever had any more connection with this desperate libeller, than any one of the blameless great men at present in power. I will likewise tell him one other thing which he little suspects, and that is, so candid are the Ministers now-a-days, that one of the shrewdest and wittiest among them has publicly declared he does not dislike a little opposition, and thinks there is no harm at all in being *rubbed now and then with a little salt*; so that, after all, the Gentleman before-mentioned only offended (as I ween) by the quantity he put in his pickle: It is therefore most evident it was always very far from this Ministry's desire to have any one creature hanged for such a political mistake. Besides, they know, that we Englishmen, being unaccustomed to the commission of crimes against our Sovereign which are punishable with death, are not sufficiently familiarized to the gallows, to consider the *dangling*



here *by the neck* in a humorous light. Indeed, by the strangeness of this attempt to wit, I should imagine the *Loyal Briton* no native of England, but rather of an adjoining country, as notoriously barren of wit, humour and poetry, as it is of every other pleasure of the imagination, being a soil where the inhabitants, from the coldness of the climate, consider every ludicrous attack upon a Ministry, like those of *The Test* and *North Briton*, with a sort of chill, or sober earnest, with us not unfrequently termed dullness. Moreover, from the name or title which my brother writer has assumed, I should suspect him to be a foreigner; for some how or other, tho' his meaning may be right enough, yet it is not expressed according to the genius of this nation, or the true English idiom. I do not ever remember to have heard of any Englishman that called himself a *Loyal Briton*, altho' I have known many who denominated themselves good Subjects and some Patriots; it sounds to me like a sort of translated English, and has, in short, the air of an appellation, which some foreigner has taken upon himself to do into English, and written, perhaps, at *The British Coffee-house* before he was well acquainted with our laws, our constitution, or our tongue. He says too, that whether a Prince among us persecutes Papists or Protestants, it is exactly the same thing; so that this writer, as yet, really differs from us in his notions both of Church and State. It cannot be long, I think, since he has taken the oaths. There is, however, I must confess, one fashionable writer of late, Mr. David Hume, the Historian, who is of the same way of thinking; and I am told, that the most ingenious of the

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the present Tories, who take to reading, find in him many paradoxes equally amusing and convincing. He is, to say the truth, a very agreeable writer, and possesses a style not inferior to that of Father Orleans in French; and is, I suppose, for that reason, so much recommended to the perusal of young men of fashion that are entering upon the world. He and the father both prove to the reader, that the first of the Stuarts had a great deal of good-nature and learning, wrote very well, loved peace discreetly, and followed the right politics for this nation. In short, that the religion and constitution changed in this country by accident, and that fanaticism heated the brains of the inhabitants so strangely, that they were never in their right senses (and therefore quarrelled about forms of government and religion, which are mere whims in themselves) and thereby became the causes of infinite distress and misfortune afterwards. These very material facts and positions are always supported by some ingenious example, or else by some quotations from private pamphlets and enthusiastic religious publications, hitherto unnoticed, genuine, but obscure productions of the time, which Mr. Hume has had the good fortune to meet with, and from thence to deduce the true principles of the great actors in those days, as well as the sense of the nation, in opposition to the famous authors and remarkable memoirs, journals of parliament and private letters of considerable men, whereon other historians have very mistakenly relied. It is in reality a performance new, entertaining and singular, and will reconcile any man to the reigns of the Stuarts, who reads it free from the  
preju-



prejudice of other histories, that is, who knows no facts but what are related in Mr. Hume, or any other relation of them, and is void of any political or religious principles relative to this constitution; in short, whose mind is free from the shackles of previous information. It is amazing what a new light he has thrown upon every thing; nay, one need but read this author to be satisfied, that we are mistaken in our opinions of all the people of those times, both as to their hearts and their understandings. In particular, as to learned men, that Sir Francis Bacon was not half the man we take him for, being exceeded by many foreigners in many respects as a philosopher, and that he was withal a most miserable writer; and as to the celebrated *Defensio pro Populo Anglicano* of Milton against the Royalists, it was a scurrilous, illiberal and contemptible performance. In short, from a few particulars and passages of lives and books, he establishes universal positions with respect to the merit and demerit, and general cast and character of an author, the whole life and conduct of a man, and the tenor of a reign. Nothing can be more satisfactory. My Lord Clarendon, a good royalist, was however an Englishman, subject of course to the national prejudices of one, and saw every thing, therefore, with the eyes of an *English* Tory; but Mr. Hume is a foreigner, bred under other laws, and tho' a royalist too, yet he sees things through very different mediums, and therefore judges more soundly, and, upon the impartial ground of his own country, lays on the true and proper colouring. In order to see what different writers they were, and how differently they draw cha-



characters, one need only take one of those drawn by Lord Clarendon, with his subtle delineation of every feature, and compare it with the slight and general (but masterly) touches of Mr. David Hume. In my humble opinion, one need only look at this strong characteristic of an Historian, to form a very just idea of the respective abilities of these two writers of the actions of the Stuarts; and, as they are both equally loyal and good men, altho' one of them lived in the times whereof he wrote, and was of the cabinet, and the other 100 years afterwards, and is but just emerged from the circle of his private country friends, and now no more than a private Secretary to an Ambassador at a foreign court; yet, as he is a philosopher by disposition, and therefore more knowing and more impartial than a mere Statesman, I think I do no injustice to any party or nation, by making the comparison of the one with the other. And having thus pitted these two Royalists, I must resume my expostulation with the *Loyal Briton*, to tell him, that I really do not recollect when it was that Queen Elizabeth made any promotions of Ministers, disgraced any author of national conquests, or concluded any peace, that occasioned such writings or libels as drew down the vengeance of the Crown upon them; although, I believe, Queen Anne, in more recent times, did something like it: but, as he has, probably, read no author of English History besides Mr. David Hume, and his pen has not got down so far, the *Loyal Briton* may, perhaps, find some instances, as pat to his purpose, in the reigns of the James's, or Charles's, that followed Queen Elizabeth, and to them I refer him. Thus far



I have ventured to talk with this writer about his positions ; but I am afraid to accompany him any longer, and surmise any thing about the execution of the D. of D. or of H. R. H. the D. of C. knowing, indeed, very little of their life or conversation, excepting that I remember to have heard the latter, some years ago, put a finishing stroke, not to constructive breaches of the Peace by the Pen, but to actual Rebellions, in favour of the Scottish line of Kings, and of Hereditary Right, by his victory at Culloden. What these two persons, therefore, have lately done, that, under the most absolute sway, even of a woman, could be prosecuted in any way, I am at a loss to guess. They seem to me to be mere negative signs at present. Upon my honour, I am not only amazed at the introduction of such matter, but I really and seriously wish the *Loyal Briton*, for his own sake, would stop his pen, at least until he has read *Droit Le Roy*, learnt what the House of Lords voted against the Author, and then calmly consider with himself, whether the present Ministry may not christen his piece (without the aid of a Bishop) a Libel, and make some orders of equal effect against him. It is disagreeable even to have a resolution for a prosecution pass against one, altho' no actual prosecution ensue. There is, I can assure him, nothing which the Administration abominate more than this species of writing, which is of a very libellous nature, if not an actual Libel. The *Loyal Briton* can be but lately arrived from foreign parts, or he would never run headlong, with all his Loyalty, into such extravagant transgressions of Zeal ! One would think he imagined to himself



a Stuart still upon the Throne. His meaning, as I suggested before, may be good, and therefore it is that I drop all this advice to him : But he is certainly no more than a Novice, as yet, in the knowlege of this constitution, country, or administration.

Excuse this last digression, and some others, which my own warmth in these speculations has insensibly led me into, although foreign I allow from the main subject of my letter : But when a man has once got a pen into his hand, it is difficult for him to refrain from venting some of his own conceits, notwithstanding he at first resolved to relate only the sentiments of others. We have all of us in reality too much vanity, and too much prejudice also, I fear.

To end, however, with what gave rise to this letter. The province of news-papers is to give every man his due, and to set his conduct in its true light, by a simple relation of facts and nothing more, that the proper reputation may attend him accordingly. This was my only motive in sitting down to write ; for, being totally impartial myself, I aim at nothing else. As to the praise of fine writing and ingenuity, let it go where it list, I never had a thought about it, and can be perfectly content with having my words as plain and artless as my purpose. I am,

GRAY'S-INN,  
Aug. 31, 1764.

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